

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BLUEFIELD DIVISION

ERICA COLEMAN WHEELER,

Plaintiff,

V.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

CIVIL ACTION NO. 1:11-0451

PROPOSED FINDINGS AND RECOMMENDATION

Defendant, Michael J. Astrue, Commissioner of the Social Security Administration, by counsel, Gary L. Call, Assistant United States Attorney for the Southern District of West Virginia, has filed an Unopposed Motion to Remand, requesting that the Court remand the above-styled case to the Commissioner for further administrative action pursuant to the fourth sentence of 42 U.S.C. §405(g). (Document No. 17.) Defendant states:

On remand, the Commissioner, through the Appeals Council, will refer Plaintiff's case to an administrative law judge (ALJ) for further proceedings, including but not limited to: obtaining a consultative psychological examination and medical source statement to reevaluate Plaintiff's mental impairments in accordance with the special techniques; reevaluating Plaintiff's physical impairments and address Plaintiff's obesity and her ability to perform routine movement and necessary physical activity within the work environment; reevaluating Plaintiff's residual functional capacity; reevaluating Plaintiff's subjective complaints; and obtaining supplemental testimony from a vocational expert.

(Id. at ¶ 3.) Defendant states that Plaintiff’s counsel has been contacted and does not oppose this Motion. (Id. at ¶ 4.) On April 10, 2012, Plaintiff, by counsel, Michael Miskowicz, filed her Response to Defendant’s Motion in which counsel states that “Plaintiff agrees to a remand of this matter to the Defendant Commissioner for further proceedings in accordance with the Motion.” (Document

No. 18.)

Sentence four of 42 U.S.C. § 405(g) provides that “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” The transcript has been filed in this case (Document No. 11.), and the Plaintiff has filed her Brief in Support of Claim. (Document No. 14.) Having the Plaintiff’s Brief in Support of Claim, the Defendant filed his Motion to Remand rather than a Motion for Judgment on the Pleadings. Apparently in view of the Plaintiff’s allegations, the Defendant requests a remand for further action and analysis consistent with the applicable law and Regulations. The Commissioner is required under the Social Security Act to include an explanation of what evidence, or inferences drawn therefrom, were relied on in arriving at a decision. See Cook v. Heckler, 783 F.2d 1168, 1172 (4th Cir. 1986). The undersigned therefore finds the reasons stated by the parties for seeking a remand appropriate.

Accordingly, there being good cause for the Defendant’s Motion for Remand and there being no objection, it is hereby respectfully **RECOMMENDED** that the District Court confirm and accept the foregoing findings, **GRANT** the Defendant’s Motion to Remand (Document No. 17.), **REVERSE** or **VACATE** the decision of the Commissioner, and **REMAND** Plaintiff’s case to the Commissioner pursuant to the fourth Sentence of 42 U.S.C. § 405(g) for further proceedings as outlined in the unopposed Motion.

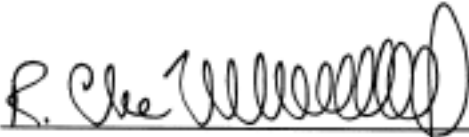
The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable David A. Faber, Senior United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and

72(b), Federal Rules of Civil Procedure, the parties shall have three days (mailing/service) and then fourteen days (filing of objections) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155, 106 S.Ct. 466, 475, 88 L.Ed.2d 435 (1985), reh'g denied, 474 U.S. 1111, 106 S.Ct. 899, 88 L.Ed.2d 933 (1986); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir.), cert. denied, 467 U.S. 1208, 104 S.Ct. 2395, 81 L.Ed.2d 352 (1984). Copies of such objections shall be served on opposing parties, Senior Judge Faber, and this Magistrate Judge.

The Clerk is directed to file this Proposed Findings and Recommendation and to send a copy of the same to counsel of record.

Date: April 12, 2012.


R. Clarke VanDervort
United States Magistrate Judge